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HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Writ Petition No.2215 of 2003

PETITIONER: A. Ekka, S/o Joseph Ekka,
Aged about 37 years,
Chief Municipal Officer,
Nagar Panchayat: Sakti,
Distt. Janjgir-Champa (C.G.)

Versus -

RESPONDENTS:

1. State of Chhattisgarh,
Through: The Secretary,
Environment, Town & Country
Development, Mantralaya,
Raipur (C.G.)

2. The Under Secretary,
Department of Town Administration
and Development, Mantralaya,
Shastri Chowk, Raipur (C.G.)

3. Shri R.S. Dongsare,
S/o Not known,
At present working as Chief
Municipal Officer,
Nagar Panchayat: Sakti,
Distt. Janjgir-Champa (C.G.)

POST FOR ORDER ON 17th SEPTEMBER, 2003

Sd/-
L.C.BHADOO
Judge

/6/9/09/2003

(36)

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Present: -

Mr. Vinay Pandey, Advocate:	For the petitioner
Mr. Sanjay K. Agrawal, Deputy A.G.:	For the State/respondents 1 & 2
Mr. Abhishek Sinha, Advocate:	For respondent No.3

Before: Hon'ble Shri Justice L.C. Bhadoo

ORDER

(Passed on 17th. September, 2003)

By this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the order dated 3rd February, 2003 (Annexure P-1) by which the petitioner has been suspended and transferred and during the suspension period his headquarter has been kept at Bilaspur.

2. The petitioner's petition is that he was working as Chief Municipal Officer of Nagar Panchayat: Sakti and all of a sudden, the petitioner was placed under suspension vide order dated 3rd February, 2003 (Annexure P-1). Thereafter, the petitioner was served with charge sheet on 08.05.2003 (Annexure P-2). The charges are frivolous and have no substance. As per the notification, if charge sheet is not served within a period of 90 days of the suspension, then the entire proceedings become null and void. The charge sheet not was served on the petitioner within the stipulated period. The petitioner made a representation against that, but to no avail. The power of suspension has been exercised under Rule 36 of the State Municipal Service (Executive) Rules, 1973, which has been misused and is a deliberate exercise to humiliate the petitioner. As per the notification, charge sheet was required to be served within 90 days. It is therefore, prayed to issue a writ of certiorari for quashing the order Annexure P-1 and to issue a writ of mandamus for reinstating the petitioner.

3. Return has been filed on behalf of the State/respondents 1 & 2 in which it has been mentioned that the petitioner being a Chief Municipal Officer is a member of the State Municipal Service and his services are governed by Chhattisgarh State Municipal Service (Executive) Rules, 1973. Rule 36 of the above Rules provides for suspension pending disciplinary proceedings and Rule 37 provides for subsistence allowance during suspension. Rule 36 provides that if having regard to the nature of charges and the circumstances in any case, the appointing authority is satisfied that it is necessary or desirable to place, under suspension the member of the service against whom disciplinary proceedings is contemplated or is pending, it may subject to the provision of sub-section (2) of Section 86 of the Act pass and order him under suspension. Therefore, in view of this express provision, which deals with the employees of the State Municipal Services, the provisions of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 does not apply. Therefore, 90 days of suspension period fixed in M.P. Civil Services (Classification, Control & Appeal) Rules, 1966, does not apply to the

petitioner's case. Moreover, the petitioner has been charge sheeted and departmental enquiry is pending against him. Therefore, the writ petition is misconceived and the same is liable to be dismissed,

4. I have heard the learned counsel for the parties.

5. The learned counsel for the petitioner submitted that as per the rules for suspension and reinstatement issued by the State Government and published in the Rajpatra (Gaszetted) on 12th March, 1982. Rule 4 lays down that if the charge sheet is not served within 90 days, then the suspension of the employee will be revoked automatically and in the present case, the charge sheet was served on the petitioner on 93rd day. Therefore, the respondents ought to have revoked the suspension of the petitioner.

6. On the other hand, the learned counsel for the State/respondents 1 & 2 submitted that since the petitioner was working as Chief Municipal Officer, being a member of the State Municipal Service, his services are governed by M.P. State Municipal (Executive) Rules, 1973 as adopted by the State of Chhattisgarh. These rules have been framed under Section 86 (2) of the M.P. Municipal Act, 1961. Rule 36 of the Chhattisgarh State Municipal Service (Executive) Rules, 1973, provides that if having regard to the nature of the charges and the circumstances in any case, the appointing authority is satisfied that it is necessary or desirable to place, under suspension the member of the service against whom disciplinary proceedings is contemplated or is pending, it may subject to the provision of sub-section (2) of Section 86 of the Act pass and order him under suspension. Since, there are specific rules for governing the services of the members of State Municipal Service, the provisions of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 as amended by Act No.9 dated 26.02.82 cited by the learned counsel for the petitioner are not applicable because the services of the petitioner are governed by the State Municipal Service. In Rule 36 of the Rules, 1973, the time limit has not been fixed within which the charge sheet is to be served on the employee. In this case, as enquiry was

contemplated against the petitioner, therefore, he was suspended and from the date of suspension within 93 days, charge sheet has already been served. Therefore, the order of suspension is not in any manner contrary to the rules and since no time limit is fixed for serving the charge sheet, the petitioner is not entitled for revoking of the suspension order.

7. Having heard the learned counsel for the parties, it is admitted position that at the relevant time, the petitioner was Chief Municipal Officer and is a member of the State Municipal Services and his services are governed by the State Municipal Services (Executive) Rules, 1973. Rule 36 of the Rules, 1973 provides for suspension pending disciplinary proceedings and under the same provision the petitioner has been suspended and in these Rules, no time limit has been fixed for serving charge sheet. The only requirement is if any disciplinary proceedings are contemplated or is pending, the member of the service can be suspended. It is admitted position that charge sheet has been served on the petitioner. Therefore, the petitioner is not entitled for any relief. As far as the question of change of headquarter during the suspension period is concerned, the authorities are within their right to change headquarter of a suspended employee and accordingly, headquarter has been fixed at Bilaspur which is not arbitrary or illegal in any manner. Since, there are specific rules to deal with the members of Chhattisgarh State Municipal Services, M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 does not apply in the case of the present petitioner. Therefore, the petitioner is not entitled to take benefit of the amended provision that if charge sheet is not served on the delinquent then he is entitled for automatic reinstatement.

8. In view of the above, the petition of the petitioner is without any substance and devoid of any merit. Accordingly, the petition is liable to be dismissed and the same is dismissed.

Sd/-
L.C.BHADOO
Judge

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